IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 14921 of 1998

Between:

Mumaneni Rajeswara Rao, S/o Narayana, R/o Kokkiligadda , Mopidevi Mandal , Krishna District.

..... PETITIONER

AND

1 The Assistant Commissioner, Endowments Department , Vijayawada.
2 The Executive Officer, Sri Malleswara Swamy Temple , Kokkiligadda , Mopidevi Mandal , Krishna District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or direction more particularly one in the nature of writ of Certiorari , call for the records and quash the notice No. dt 19-5-98 issued by the 2nd respondent in respect of Acres 7-22 cents situated in R.S No. 57 and 447 of Kokkiligadda Village, Mopidevi Mandal , Krishna Dist. of Sri Malleswara Swamy Temple being illegal, arbitrary and violative of Article 14and 19 (1)(g) and 300A of the constitution of India and violative of principles of natural justice and consequently declare that the petitioner is entitled for the protection under the provisions of Andhra Pradesh (Andhra Area) Tenancy Act,1956 (Act 18 of 1956).

Counsel for the Petitioner: MR.VENKATA RANGADAS KANURI

Counsel for the Respondent No.1: GP FOR ENDOWMENTS

Counsel for the Respondent No.2: SMT. N. INDRANI

The Court made the following :

ORDER:

The petitioner, by this writ petition, seeks to quash the notice dated 19-5-1998 issued by the second respondent informing that lease hold rights of the land held by the petitioner in an extent of Ac.7-22 cents situated in R.S. Nos.57 and 447 of Kokkiligadda village, Mopidevi Mandal, Krishna District, belonging to Sri Malleswari swamy temple, are put to public auction in accordance with the provisions of the A.P. Charitable Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Endowments Act').

The petitioner claims to be cultivating tenant of the land in question. He states that the period of lease has been extended from time to time and the lease is subsisting till 2002. His grievance is that though he is a protected tenant under the provisions of Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short 'the Tenancy Act'), he cannot be evicted abruptly from the land in question by way of the impugned notice on the ground that the Tenancy Act is not applicable to the endowment lands. Hence, the writ petition.

The second respondent filed a counter-affidavit contending that the lease period of the petitioner expired by March, 2004. It is stated that the petitioner gave an undertaking to hand over possession of the land after the sugarcane crop therein is cut in January, 2004. It is stated that the District Collector, Krishna District, Machilipatnam proposed to acquire an extent of Ac.6-42 cents in R.S.No.57/c, 447/1, 447/3, 510/2 for providing house sites to weaker sections. The petitioner, it is stated, has no right to challenge the land acquisition proceedings, inasmuch as he cannot claim better rights than what the owner has. Thus, the second respondent prays to dismiss the writ petition.

Heard the learned counsel for the petitioner and the learned counsel for the second

respondent-temple.

There is no dispute that the petitioner is in possession of the land in question as tenant. Inasmuch as major portion of the land in question was proposed to be acquired for providing house sites to the weaker sections, the petitioner cannot question the acquisition proceedings, for he cannot claim to have better rights than what the second respondent has, and at best, he being in possession of the land belonging to the second respondent as tenant and person interested in the land, can claim his share of compensation, which may be awarded by the Land Acquisition Officer for acquisition thereof. This aspect of the matter was considered by a learned single Judge of this Court in **B. Jagannayakulu v. District Collector**, wherein he held thus:

> A tenant cannot have more rights than the owner. When the question of acquisition of land comes, if the owner cannot defeat the provisions of Land Acquisition Act can a tenant defeat such provisions? Under Section 11 of the Tenancy Act change of ownership in lands which are under tenants is possible. So, by issuing a notification under Section 4 of the Land Acquisition Act, the State has expressed its intention to take the lands into their own ownership. Under the Land Acquisition Act, State can become the owner of any property provided the property is taken for a public purpose and after following the procedure laid down by the Land Acquisition Act. Change of ownership is not barred under the A.P. Tenancy Act, therefore, State can become owner of the land which are owned by landlords whether they are temples or private individuals. Once the land is taken in the ownership of the State, the A.P. Tenancy Act, 1956 becomes inoperative by virtue of Section 18 of the same Act. Section 18 of the Tenancy Act lays down that, nothing in the Tenancy Act shall apply to the lands owned by the State Government or the Central Government. Acquisition, per se, is not barred under the Tenancy Act. Change of ownership, is also not barred under the Tenancy Act. There cannot be any bar to the State Government to take the lands into its possession under the provisions of Land Acquisition Act which are in the possession of tenants at a particular point of time.

It may be noticed that even if the tenancy between the petitioner and the second respondent with respect to the lands in question is still subsisting, such tenancy having no statutory force, would not come in the way of acquisition proceedings, which are initiated under the Land Acquisition Act, 1894, which is a special enactment, enacted for acquisition of land needed for public purpose. Apart from this, it may be noticed that the apex Court in **State of A.P. and Others v. Nallamilli Rami Reddy and Others** had held that the tenancy laws would not be applicable in relation to lands belonging to a Charitable or an Endowment Institution. Therefore, the petitioner being a tenant, cannot seek to enforce the tenancy, if any subsisting, when the land, which is under his cultivation and belonging to an Endowment Institution, namely, Sri Malleswara Swamy temple, is sought to be acquired by the District Collector, Krishna District, for a public purpose, namely providing house sites to weaker sections of the society.

In the above view of the matter, the writ petition is devoid of any merit, and the same is accordingly dismissed. No costs. The learned counsel for the petitioner submitted that the petitioner may be permitted to continue as tenant in the portion of subject land which is not acquired. This Court cannot grant such a relief in view of dismissal of the writ petition. However, it is open for the petitioner to approach the respondents and seek for his continuation as tenant in the left over land, if he so intends.

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N.V. RAMANA, J

Date: 07-4-2005

Svv

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Assistant Commissioner, Endowments Department , Vijayawada.
2 The Executive Officer, Sri Malleswara Swamy Temple , Kokkiligadda , Mopidevi Mandal , Krishna District.

3 Two C.Cs. to the GP for Endowments, High Court Buildings, A.P., Hyderabad.

4 Two CD copies

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